notice of rescission, demand for repayment of purchase money, pleadings and case made at the hearing, has been one of denial of the continuing existence of the contract on which it purported to found its caveat; and from 30 July 1974, both parties were of one voice that the contract was ended."

While the facts in both *Buxton*[3] and *Frankcombe*[4] are somewhat different from the present case in that in those cases when the caveat was lodged, there was already a repudiation of the contract by the purchaser (which was not so in our present case), it seems to me that the reasoning therein is just as applicable here. The *obiter dicta* of Holland J. quoted above are on point. While the caveat might have been validly lodged on 7 November 1987, the question before me now is whether it is still in order for the defendants to insist that it remains notwithstanding that the defendants had themselves subsequently repudiated the contract. Indeed both parties had repudiated the contract, though the propriety of each repudiation is yet to be determined. In my view, from the date the defendants repudiated the contract, they no longer have any interest in the said property as purchasers. Their interest is only to recover the deposit paid to the plaintiffs. That is what the defendants are, in effect, seeking in Suit No. 2976/87. Perhaps a purchaser's lien might have arisen in favour of the defendants and in respect of which a different caveat might be lodged against the said property. That is a question yet to be argued and decided upon. Indeed, such a caveat was lodged by the defendants subsequent to the commencement of this originating summons though counsel for the defendants hastened to add that this second caveat was lodged out of abundance of caution. In any event, that question does not concern us here and on which I would not offer any views at this time. Accordingly, I rule that Caveat No. CV/52448A should have been withdrawn by the defendants.

Accordingly, I would grant an order in terms of prayers 1, 2 and 3 of the summons as follows:

(i) that the Caveat No. CV/52448A lodged by the defendants on 7 November 1987 against the said property be removed;

(ii) that the defendants do pay the plaintiffs compensation for any loss or damage occasioned by the defendants' wrongful retention of Caveat No. CV/52448A in the Registry of Land Titles;

(iii) that the defendants do pay the plaintiffs the costs of this application to be taxed.

I would, however, direct that assessment of the compensation payable under order (ii) should not be made until after the action in Suit No. 2976/87 has been finally concluded. This is because, in my view, the decision in that action is likely to have a direct bearing on the compensation payable.

Order accordingly.

Solicitors: *Abraham Low & Partners; Wee Ramayah & Partners.*

TOH TECK SUN v. MANDARIN GARDENS PTE. LTD.

[O.C.J. (Chan Sek Keong J.C.) 6 April 1988]

[Singapore – Originating Summons No. 47 of 1988]

Land Law – Conveyancing – Sale and purchase of unit in condominium – Completion statement incorrect – Persistent requests for fresh notice to complete and fresh completion statement – Completion dates expired – Completion not made – "Default" – Meaning of – Claim for interest on later completion – Nature of a completion statement – Singapore Law Society's Conditions of Sale 1981, condition 8.

The plaintiff agreed to purchase a condominium unit from the defendants. The defendants, however, sent an incorrect notice to complete and completion statement to the plaintiff. Due to the persistent requests of the plaintiff for a fresh notice to complete and a completion statement, completion of the purchase was not made at the relevant dates. Thereafter, the plaintiff claimed interest for late completion.

Held, dismissing the plaintiff's claim: (1) the function of a completion statement is to inform the purchaser the amount due from him on completion. It fulfils no other function. There is no fundamental principle that where the vendor fails to give a completion statement to a purchaser, the purchaser is under no obligation to complete on the date fixed for completion;

(2) the absence of a corrected completion account was not a sufficient reason for not completing the purchase in view of the fact that his solicitors were fully aware of the actual amount that was due;

(3) the delay in the completion on the relevant dates was attributable solely to the default of the plaintiff;

(4) the plaintiff was ordered to pay interest at 10% on the balance of the purchase price from 29 April 1987 to the date of actual completion.

Cases referred to:

(1) *Re Bayley Worthington & Cohen's Contract* [1909] 1 Ch. 648 (folld).

(2) *Killner* v. *France* [1946] 2 All E.R. 83 (refd).

ORIGINATING SUMMONS.

C.H. Eng for the plaintiff.

Tay Lim (Miss) for the defendants.

Cur. Adv. Vult.

Chan Sek Keong J.C.: The plaintiff agreed to purchase a condominium unit ("the flat") from the defendants at the price of $345,000. The relevant provisions of the agreement for sale dated 9 February 1987 are as follows:

"1. The vendor shall sell and the purchaser shall purchase free from encumbrances ... the flat described in the first schedule hereto (hereinafter referred to as 'the building unit') ... subject to the following special conditions and to the Singapore Law Society's Conditions of Sale 1981 so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with the special conditions herein contained.

...

3.(1) Subject to the provisions of paragraph (4) of this clause, the purchase price shall be paid by the purchaser to the vendor by instalments in the following manner:

(a) to (h) ... [not applicable].

(i) on completion of the sale and purchase of the building unit in accordance with clause 14 hereof, the balance of ten (10) per cent of the purchase price to be dealt with as follows:

(aa) two (2) per cent of the purchase price shall be paid forthwith to the vendor;

(bb) the remaining eight (8) per cent of the purchase price shall be paid to the purchaser's solicitors as stakeholders and the said sum or the balance thereof (after any deduction has been made in accordance with clause 18 hereof and for moneys owing to the purchaser) shall be paid to the vendor within seven (7) days of the receipt by the purchaser or his solicitors of the certificate of fitness for occupation of the building unit issued by the building authority or a photographic copy thereof duly certified as a true copy by the vendor's solicitors.

...

14.(1) The sale and purchase herein shall be completed at the office of the vendor's solicitors, ... fourteen (14) days after the receipt by the purchaser or his solicitors of the notice to complete of the vendor or of its solicitors; such notice to be accompanied by the certificate of the vendor's architect that the approval of the competent authority for the subdivision of the housing project has been obtained. On completion, the vendor shall make and execute to the purchaser an assurance of the property sold, such assurance to be prepared by and at the expense of the purchaser and, unless the Registrar of Titles has directed that the building unit may be dealt with under the provisions of the Registration of Deeds Act (Chapter 281), shall deliver to the purchaser the duplicate subsidiary strata certificate of title for the building unit. The said assurance shall contain a covenant ...

(2) The said notice to complete shall be given by the vendor on or before 31 December 1999 or before the expiry of three (3) years from the date of issue of the temporary occupation licence, whichever is earlier. If the vendor fails or is not ready and able to give the said notice to complete on the aforesaid date, the vendor shall pay to the purchaser liquidated damages calculated from day to day at the rate of ten (10) per cent per annum on the total sum of all the instalments paid by the purchaser towards the purchase price for the period commencing from the date on which notice to complete should have been given and ending on the date when the sale and purchase is completed."

Condition 8 of the Law Society's Conditions of Sale 1981 reads as follows:

"If the sale shall not have been completed on or before the date fixed for completion, then –

(a) If the delay in completion is attributable solely to the default of the purchaser, he shall pay interest on the amount of the purchase price (less the deposit and any sum paid to account) at the rate of 10% per annum from and including the date fixed for completion until the day of actual completion of the sale.

(b) If the delay in completion is attributable solely to the default of the vendor, he shall pay to the purchaser by way of liquidated damages interest at the rate of 10% per annum on the purchase price of the property from and including the date fixed for completion until the day of actual completion: Provided that if possession of the property sold has been delivered by the vendor to the purchaser before the date of actual completion then such damages shall be abated by a sum equal to the rent received by the purchaser or in case the property is delivery with vacant possession by the equivalent of a rent calculated on the annual value of the property fixed under the Property Tax Act.

(c) If the delay in completion is attributable to some cause other than the default of the vendor or the purchaser or to the default of both the vendor and the purchaser, no interest or damages shall be payable."

The defendants' solicitors, at 4.05 p.m. on 15 April 1987, served on the plaintiff's solicitors a notice to complete in which was incorporated a statement showing that the amount payable on completion was $100,500. The statement was, on the face of it, technically incorrect because the plaintiff had at 12.35 p.m. on the same day sent a cashier's cheque for $72,900 to the defendants' solicitors. The plaintiff took possession of the flat on 22 April 1987. On 23 April 1987 the plaintiff's solicitors telexed the defendants' solicitors requesting a fresh completion notice and a correct completion statement. A reminder was sent on 28 April 1987 whereupon the defendants' solicitors replied that the statement of account sent on 15 April was not incorrect (as it crossed the notice to complete). On 30 April 1987, the plaintiff's solicitors again requested a proper notice to complete (together

with a correct or corrected completion account). On 6 May 1987, the defendants' solicitors replied to say that the balance of the completion monies due was $27,600 and that as the plaintiff had not been able to complete on 29 April 1987, the defendants were entitled to charge interest.

On 18 May 1987, the defendants' solicitors informed the plaintiff's solicitors that the defendants had executed the transfer and restructure and were ready to complete. On 19 May 1987, the plaintiff's solicitors replied and insisted on a notice to complete with the correct completion account. They sent a reminder on 6 August 1987. On 17 August 1987, the defendants' solicitors sent to the plaintiff's solicitors the following telex:

"We refer by yr telex of 6 August 1987. We had given you the notice to complete and completion account in our letter of 15 April 1987. There is therefore no necessity for us to give a fresh notice to complete. In view of the partial payment of $72,900 the revised completion account would be as follows:

Sale price	$345,000
Less	
Amount paid to date	$317,400
Balance payable	$ 27,600

The interest on outstanding progress instalments and maintenance fees can only be confirmed on the actual day of completion."

On receipt of this telex, the plaintiff's solicitors requested the defendants' solicitors to complete the sale on 21 August 1987 without any interest for 14 days and reserving the right to claim interest. On 20 August 1987, the plaintiff's solicitors gave notice to complete the following day. Completion did not take place because the defendants' solicitors insisted that interest of $663.50 for late completion be paid. On 2 October 1987, the plaintiff's solicitors requested completion without prejudice to either party's position over the question of interest. However, the defendants' solicitors on 5 October 1987 replied that they had no obligation to complete the matter without prejudice to the plaintiff's claim for interest but that the plaintiff must first pay the interest for late completion.

Because of the inability of the solicitors to resolve the issue of late completion interest, completion had not taken place on the date of hearing of this application. Accordingly, the plaintiff commenced this action for completion, refund of interest on same overpaid to the defendants and interest for late completion. This judgment deals only with the plaintiff's claim for late completion interest as the other claims have already been disposed of at the conclusion of the hearing.

Before I consider the submission on this issue, it is convenient at this juncture to dispose of one argument made by the defendants' counsel. He contended that condition 8 of the Law Society's Conditions of Sale 1981 had no application, it being inconsistent with clause 14(2) of the sale agreement which allows the defendants to complete the sale before 31 December 1999 or the expiry of three years from the issue of the temporary occupation licence, whichever is earlier.

I reject this argument. Clause 14(2) requires the defendants to give the notice to complete on the earlier date of two prescribed periods of time, on pain of payment of liquidated damages if they fail to do so. But it also allows the defendants to elect to complete earlier than the stipulated period. By giving a notice to complete on 15 April 1987, the defendants have irrevocably elected to complete earlier and this election imposes an obligation on them and on the plaintiff to do so. The failure of either party to complete in accordance with the said notice will result in that party having to pay interest to the other in accordance with condition 8 of the Law Society's Conditions of Sale 1981. There is no inconsistency between this condition and clause 14(2) of the sale agreement and such election is not a modification or variation of the terms of the sale agreement.

The case for the plaintiff that he is entitled to late completion interest may be summarized as follows:

(a) The defendants failed to give a proper completion statement until 17 August 1987: the delay in completing the transaction on 29 April 1987 was therefore attributable to the default of the defendants.

(b) The plaintiff gave notice of completion and was ready to complete on 21 August 1987: the defendants refused to complete and had so refused up to the hearing of this application; the plaintiff is therefore also entitled to interest as from 21 August 1987 up to the date of actual completion.

The case for the defendants may be summarized as follows:

(a) The completion statement sent on 15 April 1987 was not incorrect to the knowledge of the plaintiff's solicitors as it crossed the plaintiff's payment of $72,900 on the same day.

(b) The plaintiff failed to complete the purchase on 29 April 1987 and the defendants were therefore entitled to interest as from 29 April 1987.

(c) The defendants were under no obligation to complete the purchase on 21 August 1987 as the plaintiff refused to pay late completion interest for the period 29 April 1987 to 21 August 1987.

The plaintiff's claim for interest is based on his counsel's proposition that a completion account is fundamental in conveyancing practice and that the plaintiff is entitled to one as a matter of right as a purchaser. I do not know what counsel means by fundamental. In my view, the function of a completion statement is to inform the purchaser the amount due from him on completion. It fulfils no other function. I do not think there is a fundamental principle that where the vendor fails to give a completion statement to a purchaser, the purchaser is under no obligation to complete on the date fixed for completion. A completion statement may not even be necessary, *e.g.* where the contract provides for the exact amount to be paid.

In this case, the plaintiff was given a completion statement which was rendered incorrect by a circumstance known to the plaintiff's solicitors. He could not say that he was unable to complete because he did not know what was payable on completion. All he could say was that a formality had not been complied with, the formality being a statement showing the reduction of the balance payable by the amount paid earlier. Instead of tendering the correct balance of the purchase price (on which there was no disagreement between the parties), the plaintiff's solicitors took a legal objection and insisted that compliance with a formality was a pre-condition to his client's obligation to complete. In my view, this objection had no legal basis.

What is the meaning of completion in the context of this case? Completion is provided for in clause 14(1) of the sale agreement which says that on the fourteenth day after the service of the notice to complete, the vendor shall make and execute to the purchaser an assurance of the property sold together with the duplicate subsidiary strata certificate of title for the flat in exchange for which the purchaser shall pay the balance of the 10% of the purchase price in accordance with clause 3(i) of the sale agreement. The delivery of the assurance and the instrument of title and the payment of the balance of the purchase price are concurrent acts.

As it is not the case of the plaintiff that the defendants were not able to comply with clause 14(1) of the sale agreement, the plaintiff must prove that he was under no obligation to complete the purchase on 29 April 1987. In my view, the absence of a corrected completion account was not a sufficient reason for not completing the purchase in view of the fact that his solicitors were fully aware of the actual amount that was due.

It follows from the above finding that the delay in completion was attributable to the plaintiff's failure to pay the balance of the purchase price.

We now come to the next relevant date, *i.e.* 21 August 1987. The plaintiff required the defendants to complete on 21 August 1987 but refused to pay interest for late completion claimed by the defendants. The plaintiff was prepared to tender the balance of the purchase price without prejudice to the defendants' claim for interest. The defendants rejected this proposal. As a result, completion was again delayed.

Was the plaintiff's failure to complete on 29 April 1987 and 21 August 1987 attributable to his default under condition 8 of the Singapore Law Society's Conditions of Sale 1981? In *Re Bayley Worthington & Cohen's Contract,*[1] Parker J. considered all the previous authorities on the meaning of "default" and "wilful default" in connection with delays in completion of real estate and held that the expression "default" involved a breach of some duty owed to another and that such conduct need not be unreasonable. Accordingly, he held that a purchaser who refused to complete until his objection to a requisition had been removed was in breach of duty and in default upon the court holding that the objection had no merit, even though he had acted reasonably for his own protection. In other words, taking a wrong view of the law, even if reasonably held, amounts to a default.

In the course of his judgment, his Lordship said (at pp. 660-661):

"Pausing for a moment to consider the effect of these decisions, I think they all point to this, that for default on a vendor's part there must be a breach of some duty towards the purchaser, though in considering whether the vendor was or was not under the duty alleged the court would be guided by the nature of the contract and all the circumstances of the case. There is no case in which the vendor has been held guilty of a breach of duty and at the same time not guilty of default, although there are cases in which such default has been held not to amount to a wilful default because the vendor was acting under some *bona fide* mistake as to his rights."

In the present case, counsel for the plaintiff took a wrong view of the law that the plaintiff was not bound to complete on 29 April 1987. In my opinion, this amounted to a default as defined by Parker J. in *Re Bayley Worthington & Cohen's Contract.*[1] Consequently the plaintiff was under an obligation to pay late completion interest.

Was the plaintiff's failure to pay late completion interest on 21 August 1987 another default? Although the Singapore Law Society's Conditions of Sale 1981 do not provide for payment of late completion interest as an item of settlement in a completion account, it is in my view a requirement at common law. In *Killner* v. *France*[2] the court held that in an open contract "completion" took place when the purchase money was paid, the property transferred or conveyed to the purchaser and all other matters were finally settled between the parties. The payment of late completion interest would be a matter which had to be finally settled between the parties as part of the process of completion.

The plaintiff could have tendered the amount of interest claimed without prejudice to his right to recover the same. If he had done that and the defendants had refused to complete, the defendants would have been responsible for the delay.

Accordingly, I find that the delay in completion on 29 April 1987 and on 21 August 1987 was attributable solely to the default of the plaintiff. He must therefore pay to the defendants interest at 10% on the balance of the purchase price from 29 April 1987 to the date of actual completion. The plaintiff therefore fails in his claim for late completion interest.

Order accordingly.

Solicitors: *C.H. Eng & Frois; Bee See & Tay.*

TURNER (EAST ASIA) PTE. LTD. v. BUILDERS FEDERAL (HONG KONG) LTD. & ANOR.

[O.C.J. (Chan Sek Keong J.C.) 30 March 1988]

[Singapore – Originating Motion No. 90 of 1987]

Legal Profession – American law firm – Intending to act as advocates and solicitors in arbitration proceedings in Singapore – Whether permissible – Legal Profession Act (Cap. 161, 1985 Ed.), ss. 29 & 30.

The applicants were the main contractors for a building project. The respondents were the sub-contractors for the construction of certain curtain walls. For certain reasons, the applicants stopped all works. Subsequent to the stoppage, the respondents made certain claims from the applicants. The disputes were referred to arbitration.

D & P (an American law firm) purported to represent the respondents. The applicants applied for and obtained an interim injunction restraining D & P from acting for the respondents. The applicants in the instant case sought to make the injunction permanent.

The applicants contended that D & P by so acting for the respondents have contravened, and by intending to so act in the arbitration proceedings will contravene, either section 29(1) or section 30(1) of the Legal Profession Act ("the Act").

The respondents argued that the Act has no application to arbitration proceedings and that foreign lawyers and non-lawyers are not prohibited by the Act from representing parties to arbitration proceedings in Singapore.

Held, allowing the application: (1) it is neither necessary nor desirable to attempt to identify the acts and services which have the quality or character of being "legal" acts or services or which may only be provided by advocates and solicitors. The character of a legal service is not determined solely by the requirement of knowledge of the law, for non-advocates and solicitors may have a knowledge of the law and many of them have a better knowledge. The categories of legal services are not closed nor do they remain static for all time. They change from time to time to meet the needs of society;

(2) two tests may be constructed from the authorities and the provisions of sections 29 and 30 of the Act:

(a) other than those specific acts listed in section 30(1) and (2), an act is an act of an advocate and solicitor when it is customarily (whether by history or tradition) within his exclusive function;

(b) a person acts as an advocate and/or solicitor if, by reason of his being an advocate and solicitor, he is employed to act as such in any matter connected with his profession;

(3) applying these two tests, firstly, the services of D & P intended to be provided to the respondents are services customarily provided by advocates and solicitors of the Supreme Court and indeed may be said to constitute the core services of the legal profession. Secondly, D & P's employment in the arbitration proceedings is in connection